IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 440 OF 2006

Mr. Gurudas Dinanath Lotlikar,
major, permanent resident of F4,
Susheela Apartments, Taleigao,
Panaji, Goa.
Through Power of Attorney,
Mrs. Vassanti Gurudas Lotlikar,
Major of age, Indian National,
Permanent resident of F4,
Susheela Apartments,
Taleigao, Panaji, Goa. .... Petitioner.

versus

Automobile Corporation of Goa Ltd.,
a company incorporated under
the Companies Act, 1956,
having its registered office at
Bhimpal, Honda, Sattari,
Goa – 403 530. .... Respondent.

Mr. Shivan Desai, Advocate for the petitioner.

Mr. D. Pangam, Advocate for the respondent.

Coram:- J.N. PATEL, J.

Date:- 23rd November, 2006.

ORAL JUDGMENT:

Rule returnable forthwith.

2. Heard.

3. The petition can be disposed of at the stage of admission. The petitioner is the original plaintiff who has filed the suit for specific performance against the defendant company. The plaintiff is an N.R.I. and his suit was being prosecuted by his wife to whom the plaintiff has given Power of Attorney.

4. The plaintiff visited Goa from Brunei in 2003 on two occasions so as to persuade the defendant to perform their part of the contract and execute Sale Deed. It was the case of the plaintiff that normally he visits Goa once in a year, but as he was keen in purchasing the property he thought it necessary to persuade the defendant and therefore was required to visit twice for the said purpose, and it is in this back ground that the plaintiff wanted to place on record certain documents relating to his travelling and visit to Goa on two occasions in the year 2003. Therefore the plaintiff filed an application under Order 7 Rule 14 of C.P.C. seeking leave of the Court to tender the Passport and rely upon it as evidence. This application was contested by the defendant, that it is not material to decide the controversy in the suit, and therefore the Trial Court by the impugned order dated 6.7.2006 rejected the application filed by the plaintiff which is challenged before this Court.

5. The learned Counsel for the petitioner/original plaintiff submitted that, the fact that the plaintiff has visited twice in the year 2003 to persuade the respondent/defendant rather supports his case that he was ever ready and willing to perform his part of the contract and during these two visits he persuaded the defendant to execute the same and therefore this is material document which he proposes to tender as evidence in order to support his case. It is submitted that the plaintiff cannot take any risk for want of deficiency in evidence as

regards the element of his readiness and willingness to perform his part of the contract and by way of abundant, caution wanted to place on record his travelling document which could have been allowed by the Court as it does not prejudice the defendant's case in any manner.

6. The learned Counsel appearing for the respondent/ original defendant submitted that the Trial Court was justified in rejecting the application as the Passport was not relevant and that the defendant has not disputed that the plaintiff was working out of India and the fact that the plaintiff's wife is prosecuting the case being the Power of Attorney holder and therefore the Trial Court was justified in dismissing the application.

7. This Court has examined the application as well as the impugned order. The Trial Court has rejected the application on the ground that the document is not relevant and that the suit is being prosecuted by the plaintiff's wife who is holding Power of Attorney on his behalf and therefore his visit to Goa becomes irrelevant and this document is not necessary to decide the case and there is no issue casted to that effect. This Court finds that the Trial Court erred in appreciating the case of the plaintiff and the issue as to whether the plaintiff was ready and willing to perform his part of the contract is a material issue which is required to be decided by the Trial Court in a suit for specific performance and if the plaintiff wants to tender any additional evidence by way of document to show that he was required

to visit Goa twice in the year 2003 in order to persuade the defendant to perform their part of the contract. It does go to support the plaintiff's case that he was ever ready and willing to perform his part of the contract and therefore the question whether the plaintiff is residing out of the Country or not is definitely not an issue and the Trial Court has misconstrued it when the plaintiff sought to tender the Passport as a document in support of his claim. Therefore the impugned order deserves to be quashed and set aside.

8. The plaintiff has tendered the document at this stage when the plaintiff's evidence was closed and this Court is informed that as there was no stay to the proceedings even the defendant has closed their case. Therefore the document can be permitted to be filed by the plaintiff subject to costs which this Court quantifies at Rs.5,000/-.

9. The impugned order is therefore quashed and set aside. The application is allowed subject to the petitioner/original plaintiff depositing the costs of Rs.5,000/- in the Trial Court which shall be credited to the account of District Legal Aid Authorities, North Goa.

10. Rule is made absolute in aforesaid terms.

J.N. PATEL, J.

/ef